

Internal Revenue Service
memorandum

CC:TL-N-1854-91

Br4:MEHara

date: **DEC 11 1990**

to: Deputy District Counsel, Manhattan NA:MAN

from: Assistant Chief Counsel (Tax Litigation) CC:TL

subject: *In re* [REDACTED]
Chapter 11, Bankruptcy Court [REDACTED]

This is in response to your November 30, 1990 request for formal tax litigation advice in the above-entitled bankruptcy matter. You seek our advice on an expedited basis.

ISSUE

Whether the Internal Revenue Service is prohibited from issuing a second notice of deficiency when the taxpayer is in bankruptcy proceedings. Even if the Service is not prohibited, you propose that the Service's interests are adequately protected by the filing of an amended proof of claim for the increased amount and a second notice of deficiency not be issued.

CONCLUSION

We concur in your proposed course of action that the Service file an amended proof of claim and not issue a second notice of deficiency. This course of action has been informally discussed with CC:GL.

DISCUSSION

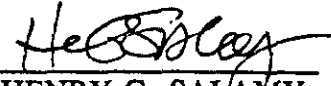
This situation arises because after the bankruptcy filing and after the issuance of a notice of deficiency, the Service discovered that its deficiency determination had been understated by some \$[REDACTED] for the year [REDACTED]. The question is how the Service should best protect its interests. The suggested course of action you propose is that the Service file an amended proof of claim with the bankruptcy court and not issue a second notice of deficiency.

We have been unable to locate authorities dealing with whether the last paragraph of I.R.C. § 6212(c) referencing bankruptcy matters can be read as prohibiting a second notice of deficiency in such situations. Notwithstanding, since we concur in your proposed course of action with respect to the utilization of an amended proof of claim, the Service's interests are properly protected.

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Please contact Michael E. Hara at FTS 566-3305 if you have any questions or need further assistance in this matter.

MARLENE GROSS
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By: 
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